

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 06-20402-BC
Honorable Thomas L. Ludington

JEFFREY DUMAS,

Defendant.

**ORDER GRANTING DEFENDANT’S MOTION FOR RECONSIDERATION TO
PROCEED IN FORMA PAUPERIS ON APPEAL AND DENYING WITHOUT
PREJUDICE DEFENDANT’S MOTION FOR APPOINTMENT OF COUNSEL**

Defendant Jeffrey Dumas’ motion for reconsideration to proceed in forma pauperis [Dkt. # 46] and motion for appointment of appellate counsel [Dkt. # 48] are presently before this Court. Defendant is currently confined at Allenwood Correctional Facility in White Deed, Pennsylvania. This Court sentenced Defendant to 360 months imprisonment after pleading guilty to conspiracy to distribute cocaine base and distributing cocaine base. *See* 21 U.S.C. § 846, 21 U.S.C. § 841(a)(1). At the time of his sentence, Defendant was represented by retained counsel. Soon thereafter, Defendant’s counsel withdrew. On June 4, 2007, Defendant, acting pro se, filed a notice of appeal.

On January 23, 2008, this Court denied Defendant’s motion to proceed in forma pauperis without prejudice because Plaintiff’s application did not satisfy the good faith requirements of 28 U.S.C. § 1915(a). Defendant’s notice of appeal merely stated, “[e]nclosed please find my notice of intent to appeal.” Dkt. # 39. Defendant filed the instant motion for reconsideration asserting that the application did not request the legal basis of his appeal. Moreover, the instant motion identifies several issues he wishes to appeal, which demonstrates that the appeal is “not frivolous.” *See*

Harkins v. Roberts, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (quoting *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)). Additionally, Defendant's affidavit demonstrates that he is without the financial means to pay for his appeal. See Dkt. # 44. Defendant has met his burden under 28 U.S.C. § 1915(a) and the Court will grant his application to proceed in forma pauperis.

Next, Defendant requests this Court to appoint counsel for his appeal. This Court acknowledges that an indigent defendant has the right to representation on direct appeal of a criminal conviction. See *Pension v. Ohio*, 488 U.S. 75, 85 (1988). Defendant, however, has already appealed this matter to the Sixth Circuit. Moreover, the Court's search of Defendant's appeal before the Sixth Circuit (Court of Appeals Docket #: 07-1689) indicates that Defendant has not requested the Sixth Circuit for counsel. The Court concludes that it is more appropriate for the Sixth Circuit to appoint counsel on behalf of Defendant. Thus, the Court will deny Defendant's motion for counsel without prejudice and direct Defendant to file the motion for counsel with the Sixth Circuit.

Accordingly, it is **ORDERED** that Defendant's motion for reconsideration to proceed in forma pauperis on appeal [Dkt. #46] is **GRANTED**.

It is further **ORDERED** that Defendant's motion for appointment of appellate counsel [Dkt. #48] is **DENIED WITHOUT PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 25, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 25, 2008.

s/Tracy A. Jacobs
TRACY A. JACOBS